

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1028 of 1999

in

SPECIAL CIVIL APPLICATION No 5149 of 1999

with

CIVIL APPLICATION NO. 7576 OF 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

CHANDLODIA SEVA SAHKARI MANDALI LTD.

Versus

SANJAYBHAI BHAVSAR RETURNING OFFICER

Ap

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MR.N.D.NAIAVATI,sr. advocate with Mr HARIN P RAVAL for Appellant
MR S N SHELAT, Addl. Adv.Gen. with Mr. Bhatt for
State authorities
MR K.G.VAKHARIA with Avni Mehta for respondents 5
and 6.

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: /12/1999

CAV JUDGEMENT

Per Thakker,Actg. C.J:

This appeal is filed against dismissal of SCA No. 5149 of 1999 by the learned Single Judge on July 24, 1999.

Appellant was the original petitioner. It filed the above petition for an appropriate writ, direction or order quashing and setting aside the decision taken by the Returning Officer of Ahmedabad District Cooperative Bank Limited and City Deputy Collector, Ahmedabad (Rural), deleting the name of the petitioner society from the City Taluka constituency of Multi Purpose Agriculture and Seva Sahkari Mandali of Ahmedabad District Cooperative Society from final list of voters declared and published on July 14, 1999.

The case of the petitioner was that it was a society registered under the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as 'the Act'). It was registered in accordance with law on September 30, 1996. By an illegal order dated July 13, 1999 passed by the Addl.Registrar (Appeals), registration was sought to be cancelled. The said action was contrary to law and violative of principles of natural justice. It was also based on irrelevant and non-existing considerations and the proceedings had been initiated by a totally stranger and third party who could not have moved the authorities for cancelling registration of the petitioner society. The said order was, therefore, illegal, ultra vires and de hors the Act. It, therefore, filed SCA No. 5149 of 1999 for appropriate reliefs.

The learned Single Judge before whom the matter was placed for admission, issued Rule as he found prima facie substance therein. He also granted ad-interim relief against operation of the order dated July 13, 1999 and issued Notice as to why interim relief should not be granted. After hearing the parties,however, the coordinate court vacated ad-interim relief against which another LPA being LPA No. 1033 of 199 is filed by the present appellant.

So far as the present petition was concerned, a prayer was made to continue name of the petitioner society in the final list of voters as the decision to delete the name of the petitioner society was illegal and contrary

to law. A prayer was, therefore, made to suspend the decision of the first respondent deleting the name of the petitioner society by directing him to continue the name of the petitioner society in the final list of voters of City Taluka constituency of Multi Purpose Agriculture and Seva Sahkari Mandali of Ahmedabad District Cooperative Bank Limited and to authorise the petitioner society to permit its delegate to take part in the election process.

The learned Single Judge vide an order dated July 24, 1999, after hearing the parties, held that in petition under Art. 226 of the Constitution, this Court would not ordinarily interfere with an order passed by the authorities if the aggrieved party has an alternative remedy available to it. According to the learned Single Judge, in view of the fact that in accordance with provisions of Chapter XIA of the Act read with Gujarat Specified Societies (Election to Committee) Rules, 1982, after the election is over, the aggrieved party can approach election tribunal. In the opinion of the learned Single Judge, "such an aggrieved party would include the person or society who/ which is challenging its non-inclusion in the final list of voters". The learned Single Judge observed that powers under Art. 226 are no doubt extensive and plenary and in exceptional circumstances, this court may exercise the same in larger interest of justice, but in his opinion, this was not a case in which those exceptional powers could be exercised. Learned Single Judge considered the fact that registration of the society was cancelled on July 13, 1999 and the matter came up for consideration before the Returning Officer on July 14, 1999. In view of an objection raised by one Bhavanbhai B. Bharvad, a member of the District Panchayat and Sendhabhai Bharvad, a delegate of Piplaj Gopalak Vashat Sahkari Mandali, the Returning Officer passed an order on July 14, 1999 upholding the objection that the petitioner society had no agricultural lands in Chandlodia and that since registration was cancelled, its name was required to be deleted. Learned Single Judge also took into account the fact that in cognate matter (SCA No. 5245 of 1999), ad-interim relief granted by the learned Single Judge came to be vacated by him and in the light of that fact also, the order passed by Returning Officer could not be interfered with. Accordingly, the learned Single Judge dismissed the petition on the ground that the petitioner society had statutory remedy of raising a dispute before election tribunal after the election is over. The said order is challenged before us.

We have heard Mr. N.D.Nanavati, senior advocate with Mr.

Harin Raval for the appellant and Mr. S.N.Shelat, Additional Advocate general for the authorities.

Mr.Nanavati reiterated the contentions raised in LPA No.1033 of 1999. He also submitted that the learned Single Judge has committed an error of fact and also an error of law and jurisdiction in basing his decision on some grounds which did not weigh with the Returning Officer. He also submitted that the order was passed observing that the petitioner society has no agricultural land in Chandlodia and registration was cancelled by the Additional Registrar on that ground. But it was factually not correct. He submitted that neither Bhavanbhai B. Bharvad nor Sendhabhai Bharvad had locus to raise any objection as they were totally strangers or third parties. If it were so, the argument proceeded, no action could have been taken by Returning Officer and in that case, the order would be null and void and in the eye of law, it cannot be said to be an order "under the Act". He also submitted that election process cannot be said to have been started and this was eminently a fit case in which interim relief was required to be granted.

Our attention was also invited to various decisions including a decision in Surendra Sinhji Zala vs Chief Electoral Officer, AIR 1969 Guj. 192. He also referred to provisions of the Representation of People Act, 1950 and Representation of People Act, 1951 and comparing provisions of the Gujarat Cooperative Societies Act, 1961, he submitted that the ratio laid down by the Division Bench of this court in Surendrasinhji Zala would apply with equal force to the case on hand and the learned Single Judge ought not to have dismissed the petition on the ground of availability of alternative remedy. He further submitted, placing reliance on various decisions of the Supreme Court as well as of this Court, that right to contest at the election, right to be a voter, right to vote, right to get elected, etc. are neither common law rights, nor inherent rights, nor fundamental rights but they are only statutory rights and such rights can be claimed and exercised within four corners of a statute. Since no objection could have been raised by third party under the Act, no proceedings could have been initiated against the petitioner and action taken and order passed against the petitioner would be unlawful and illegal. Such purported action ought to have been stayed by the learned Single Judge.

Mr. Shelat, on the other hand, supported the order passed by the learned Single Judge. He submitted that the order was passed by the first respondent, Returning

Officer, who can be said to be competent authority under the Act to take such action. Therefore, even if the petitioner has grievance against the same, the learned Single Judge was perfectly justified in dismissing the petition at the threshold by directing it to take appropriate remedy which is equally efficacious and alternative and no fault can be found with such order.

In the facts and circumstances of the case, in our opinion, it cannot be said that by dismissing the petition, the learned Single Judge has committed an error of law. As observed by us in LPA No.1033 of 1999, ordinarily, when an alternative remedy is available to a party, this Court would not exercise extraordinary powers under Article 226 of the Constitution. It is, no doubt, true that powers of this Court under Article 226 are not circumscribed by any statutory provisions. It is also true that in exceptional circumstances, this Court can exercise such powers. But while exercising powers and granting reliefs in favour of a party, this Court would not be unmindful and ignorant of the remedy available under the Act. Intention of the legislature must be taken into consideration while deciding a petition under Article 226. As on today, Additional Registrar has cancelled registration of the appellant society. Moreover, in the provisional list of voters, name of the petitioner society was included, but in the final list of voters, it has been excluded. Unless and until such order is set aside, it stands. It also cannot be gainsaid that against the order of cancellation of registration, a petition is filed in which ad-interim relief was granted but after hearing the parties, the same was vacated by another learned Single Judge and we are dismissing LPA against that order. That fact, therefore, also has its own bearing. If in the light of these facts, learned Single Judge has dismissed the petition on the ground that in such matters, as per well settled law, the aggrieved person can take appropriate proceedings by availing remedy available to him after the election is over, which can be instituted before election tribunal, it cannot be said that by doing so, the learned Single Judge has committed an error of law and/or of jurisdiction which requires to be interfered with by us.

For the foregoing reasons, we see no substance in the present LPA and the same deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs. No order on the civil application.

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